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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

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CC Docket No. 96-98
FCC 96-182

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

REPLY COMMENTS OF CELPAGE, INC.

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REPLY COMMENTS OF CELPAGE, INC.

Celpage, Inc., by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Reply Comments regarding the Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding.¹

I. Summary of Comments of PRTC.

In the NPRM, the Commission began the implementation process for sections 251, 252 and 253 of the Telecom Act. The statutory language of these provisions authorizes the FCC to utilize its rule making power to implement the provisions of Section 251. In its comments, the Puerto Rico Telephone Company ("PRTC") argued that the role of the FCC in implementing the Telecom Act, should be minimal. PRTC Comments at p. 2. PRTC asserted that Section 251 of the Telecom Act delegates the role of arbitration of interconnection agreements to the state public utility commissions. Additionally, the PRTC argued that the Commission's limited exercise of its rule making power over regulating LEC interconnection would be more consistent with the "spirit of the 1996 Act." Id. at p. 2.

¹ FCC 96-182 (released April 19, 1996)

PRTC also stated that the powers to regulate rates under the provisions of Section 252 of the Telecom Act are expressly granted to the States, not the FCC. Id. at p. 2. In response to the FCC's inquiry in the NPRM regarding whether it should establish substantial variation in LEC rates among the states, PRTC argued that the legislative history supports the conclusion that Congress did not mandate uniformity in local interconnection rates. The comments of PRTC also criticized the adoption of Long Run Incremental Cost and Total Services Long Run Incremental Cost models to regulate prices, based on the premise that neither model has been established to ensure that rates are just and reasonable. According to PRTC, regulation of rates through a system of acceptable price ranges would be the only regulatory model that would allow the states the regulatory flexibility necessary for the states to "account for pricing variations" which are derived from differences in population density, income levels, terrain and climate characteristics. Id. at p. 10.

II. PRTC's Exemption From Effective State Regulation.

It is not surprising that PRTC does not want the FCC involved in interconnect matters. Celpage previously explained in its Comments that the PRTC and its affiliates² have an express statutory exemption under the laws of the Commonwealth of Puerto Rico that exempts them from binding review by the Puerto Rico Public Services Commission ("PRPSC").³ The statute specifically exempts, "the rates, rights and charges and other terms and conditions of services

² 27 L.P.R.A. § 401

³ A-Plus Information Processing Corp. v. Puerto Rico Telephone Co., Case No. 0-84-625 (Supreme Court Puerto Rico 1993); (in this case it was held that the PRTA, PRTC and PRCA were not subject to the regulatory power of the PRPSC)

offered by the [PRTA]."⁴ Accordingly, it follows that the statute has been interpreted to preclude the power of any department or governmental agency of the Commonwealth of Puerto Rico over the use of telecommunications facilities and services offered by PRTC and its affiliates.⁵

In its comments, the PRTC requests that the FCC refrain from utilizing its statutory powers to regulate rates and assure uniformity in the implementation of the Telecom Act among the states. Its comments state that such an exercise of power by the FCC would undermine the state's Section 251 powers to arbitrate disputes and mediate negotiations for interconnection.

Celpage takes exception with PRTC's arguments, particularly in the context of Puerto Rico's concerns. The unchecked preservation of power to the states to govern interconnection is contrary to the dual authority granted to both the states and the FCC in implementing the Telecom Act.

In the relatively closed market environment of Puerto Rico, PRTC's constrained interpretation of the Telecom Act would effectively allow the PRTC to enhance preexisting barriers to entry in the telecom market, and further insulate its monopoly over LEC interconnection services. The Commonwealth of Puerto Rico is home to more than 3.5 million American citizens. See 1990 Census, Land Area and Population Density, at p. 183. In 1994, PRTC reported operating revenues of nearly \$1 billion. These statistics contribute to PRTC being the twelfth largest telephone company in the U.S. Due to PRTC's statutory exemption, which completely precludes effective state regulation of interconnection in this market, the FCC must utilize its authority to implement the interconnection requirements of the Telecom Act to

⁴ Id.

⁵ Id.

the fullest extent possible. Otherwise, the pro-competitive mandates of the Telecom Act may never be realized in Puerto Rico

III. The Telecom Act Grants the FCC the Power to Ensure Implementation of the Act

In Section 251(f)(2), Congress expressly granted the FCC the power to "complete all action[s] necessary to establish regulations to implement the requirements of this section."⁶ In light of the fact that PRTC and its affiliates are the only incumbent LECs operating in Puerto Rico, coupled with the effect of its unique statutory exemption, the FCC's authority to promulgate rules to assure that just and reasonable interconnection agreements are instituted in Puerto Rico would be more than justified.

The PRTC's argument that less uniform regulations will allow the states to efficiently implement the Act, is unconvincing. In its comments, the PRTC cites to discrepancies in climate, terrain and line densities as justifications for the reason why interconnect regulations should be flexibly implemented on a state by state basis. Those features are not unique to Puerto Rico; what is unique to Puerto Rico is a virtual absence of meaningful local regulatory oversight of the monopoly LEC.

Since the PRTC is not subject to any meaningful state regulation, it would not be possible for a new LEC entrant to obtain fair and reasonable interconnection and comparable access to network elements unless the PRTC offers these services to a competitor of its own volition. Surely, at least in Puerto Rico, uniform federal rules that will establish standards for fair and reasonable interconnection and access to network elements, will be necessary to assure that the pro-competitive goals of the Act are achieved. Pursuant to Section 251(f)(2), the FCC is

⁶ 47 U.S.C. § 251(f)(2).

authorized to promulgate the necessary rules to implement the Telecom Act uniformly throughout the U.S. and its territorial possessions

IV. Statutory Exemptions

Celpage agrees with the comments filed by Telefonica Larga Distancia de Puerto Rico, Inc. that state that the FCC should use its statutory rule making authority to implement uniform standards to instruct state commissions on which LECs should qualify for exemption from the enhanced duties and obligations of Section 251. Surely, the PRTC, as the twelfth largest telephone company in the U.S., should not qualify for any waiver granted by the PRPSC, which would eviscerate the obligations of compliance with the Telecom Act.⁷

A monopolistic LEC operating in a market with substantial barriers to entry, such as the PRTC, should not be entitled to such a waiver. To avoid such an inappropriate result, Celpage requests that the FCC enact specific rules that define the following terms: "necessary," "significant adverse economic impact," "economically burdensome," "technically infeasible" and "consistent with the public interest." Specific definitions will prevent incumbent LECs such as the PRTC from abusing this exemption for purposes which are inconsistent with the public interests intended by the Telecom Act.

Conclusion

For all the foregoing reasons, Celpage respectfully requests that the Commission

⁷ Section 251(f)(2) sets forth the vague standards by which states determine whether such an exemption is warranted. 47 U.S.C. § 251(f)(2) (A) is necessary (I) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience and necessity "

specifically rule that the PRTC does not qualify for a waiver under Section 251(f)(2) of the Telecom Act. Without affirmative action by the FCC, the citizens of Puerto Rico may be deprived of the benefits of added competition in the LEC/CMRS market. The PRTC is a large monopolistic LEC operating in a market with unique barriers to entry. Circumvention of the duties imposed by Section 251(c), will produce anti-competitive results contrary to the express purposes of the Telecom Act.

Respectfully submitted,
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May 30, 1996

CERTIFICATE OF SERVICE

I, Regina Wingfield, a legal secretary in the law firm of Joyce & Jacobs, Attorneys at Law, LLP, do hereby certify that on this 30th day of May, 1996, copies of the foregoing Comments of Celpage, Inc. were mailed, postage prepaid to the following:

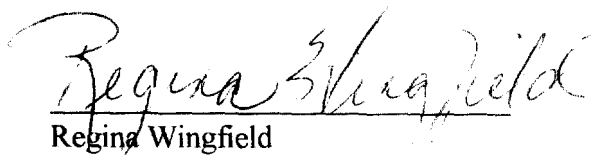
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